

1. Successful completion of a post-graduate course in a physical therapy program leading to a Doctor of Physical Therapy (DPT) degree for the licensed physical therapist or a three-credit course in an entry level physical therapy program for the licensed physical therapist assistant. Such programs must be in institutions of higher learning, which are accredited by the United States Department of Education [or the Council on Postsecondary Accreditation], **Office of Postsecondary Education** or their approved agencies: 15 credits for each course credit awarded; [or]

2. Successful completion of a course in an academic program related to the practice of physical therapy provided that such course is not part of the physical therapy program completed by the licensee to meet the educational requirements for initial licensure under N.J.A.C. 13:39A-5.1 or 5.2: 15 credits for each course credit awarded[.]; or

**3. Successful completion of a continuing education course sponsored by the American Physical Therapy Association (APTA), or the American Physical Therapy Association of New Jersey (APTANJ): one credit for each hour of the course.**

(c) The Board shall grant a maximum of 10 of the mandatory 30 continuing education credits required in a biennial renewal period of licensed physical therapists and licensed physical therapist assistants from any or all of the following:

1.-3. (No change.)

4. Preparation of an educational or scientific article authored and published in a professional refereed journal: three credits per article as approved by the Board; [or]

5. Courses, programs, or seminars in physical therapy practice management: one credit for each hour of attendance[.];

**6. Writing a chapter of a published textbook related to physical therapy: three credits per chapter up to a maximum of 10 credits; or**

**7. Editing a published textbook related to physical therapy: five credits per book up to a maximum of 10 credits.**

(d)-(f) (No change.)

**(g) A licensed physical therapist who provides clinical instruction to a student in a clinical facility that is affiliated with a physical therapy program that is approved for the education and training of physical therapists by an accrediting agency recognized by the United States Department of Education, Office of Postsecondary Education shall receive one credit for each 40 hours of clinical instruction up to a maximum of four credits per biennial period.**

Recodify existing (g)-(i) as (h)-(j) (No change in text.)

13:39A-9.4 Documentation of continuing education credit

(a)-(f) (No change.)

**(g) A licensee who writes a chapter of, or edits, a textbook shall retain a copy of the published textbook.**

**(h) A licensee who provides clinical instruction to a student shall retain documentary proof from the student's school that indicates the period of time during which the licensee provided clinical instruction.**

[ (g) ] (i) (No change in text.)

## TRANSPORTATION

### (a)

#### DIVISION OF CAPITAL PROGRAM MANAGEMENT

#### OFFICE OF OUTDOOR ADVERTISING SERVICES

#### Notice of Proposed Substantial Changes upon

#### Adoption to Proposed New Rules

#### Vegetation Canopy Management

#### Proposed Changes: N.J.A.C. 16:41F-1.1, 1.2, 2.1, 4.1,

#### 4.2, 5.2, 5.3, 5.4, 6.1, 6.3, 6.4, and 9.1 and 16:41F

#### Appendix 3

Proposed: August 18, 2014, at 46 N.J.R. 1803(a).

Authorized By: Jamie Fox, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5 and 27:1A-6.

Submit written comments by June 19, 2015, to:

Miriam Weeks  
Administrative Practice Officer  
New Jersey Department of Transportation  
PO Box 600  
Trenton, New Jersey 08626-0600  
Fax: (609) 530-4638

Submit electronically at: [njdotRules@dot.state.nj.us](mailto:njdotRules@dot.state.nj.us). This rule may be viewed or downloaded from the Department's website at: <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

**Take notice** that the Department of Transportation proposed new rules at N.J.A.C. 16:41F on August 18, 2014, at 46 N.J.R. 1803(a) establishing standards for the management of vegetation within State highway right-of-way (ROW) under the jurisdiction or control of the New Jersey Department of Transportation (Department), through a Vegetation Canopy Management (VCM) Plan. The public comment period closed October 17, 2014.

The Department is proposing a number of substantial changes to the amendments in response to comments received. A summary of the comments that prompted changes and the agency responses is provided below. This notice of substantial changes is published pursuant to N.J.S.A. 52:14B-4.10. Changes are proposed in the following areas:

1. Clarifying instances when applications may not be approved;

2. Clarifying and deleting definitions;

3. Clarifying restrictions and conditions when VCM Plans may not or will not be authorized;

4. Adding provisions related to minor and major VCM Plans and their requirements for submission;

5. Adding a process for appeals of Department determinations that VCM plans would be denied;

6. Adding provisions relating to second violations of either N.J.A.C. 16:41 or 16:41C;

7. Clarifying the time period when work can be performed; and

8. Revising Figures 1 through 2 and Table 2 found in the chapter Appendix 3, related to the VCM Zones of Visual Influence.

Comments were received from Louis L. D'Arminio on behalf of CBS Outdoor, LLC; Interstate Outdoor Advertising, LLC; Clear Channel Outdoor; Lamar Advertising; Steen Advertising; Jersey Outdoor, LLC, as well as other unnamed industry representatives; and also from Lawrence J. Urban.

#### Subchapter 1

1. COMMENT: Related to N.J.A.C. 16:41F-1.2(c)1, the viewing distance window of 200 feet to 400 feet (translated to only 3.5 to 4.5 seconds of viewing time based on typical highway speeds) is too short. The commenter states that, at a minimum, a standard view time of five seconds should be provided, with a corresponding impacted zone of visual influence. There should also be consideration for some flexibility involved in computing view time based upon an analysis of the permitted roadway speed, configuration, etc. The commenter also requested the opportunity to supplement the comments as necessary pending an analysis of the same by their engineer. The commenter also believes that this limitation refers to clearing, when in the majority of situations only pruning or trimming may be sufficient. The area limitations in this section should not apply to pruning or trimming.

RESPONSE: This provision is proposed to be relocated to N.J.A.C. 16:41F-1.2(f)1. The commenter did not provide any basis for what is described as a "standard viewing time," nor could the Department find any recognized industry standard for viewing time. Nonetheless, the Department has considered this comment and has determined that adjustments to the viewing times, as provided in the proposed new rules, warrant amendments to achieve the commenter's suggestion that the viewing time be increased. The first amendment relates to the location of the zone of visual influence. As depicted in Figures 1 and 2 of Chapter 41F Appendix 3, the zone of visual influence did not provide the true area in which a sign would be visible to a passing motorist. As a motorist reaches the point where the vehicle is perpendicular to the sign, the sign is actually no longer visible to that motorist. The Department, therefore,

has shifted the zone of visual influence away from the point where the vehicle is perpendicular to the sign, as shown in revised Figures 1 and 2 of Chapter 41F Appendix 3. Adjusting the location of the zone of visual influence maximizes the view time for the sign. The Department also proposes to amend Table 2 of Chapter 41F Appendix 3. As originally proposed, the vegetation canopy management (VCM) distance of 300 feet was applied to roadways with a speed limit of 40 to 55 miles per hour (mph) and a VCM distance of 400 feet was applied to roadways with a speed limit of 60 mph or above. The Department proposes to apply the 300-foot VCM distance to roadways with a speed of 40 to 50 mph and apply the 400 VCM distance to roadways with a speed of 55 mph or above. Shifting roadways with a speed of 55 mph from the 300-foot VCM distance to the 400-foot VCM distance increases the viewing time for those roadways from 3.7 seconds to 4.9 seconds, essentially the five-second viewing time requested by the commenter. Overall the change to Table 2 increases the approximate viewing times from a range of 3.5 to 4.5 seconds to a range of 3.9 to 5.4 seconds. The Department believes that combining the change to the location of the zone of visual influence with the change to Table 2 addresses the commenter's concern that the viewing time is too short. As such, the Department does not believe that further analysis by the commenter's engineer is necessary. Amendments are proposed to recodified N.J.A.C. 16:41F-1.2(f)1 to reflect the changes proposed to Table 2 and Figures 1 and 2 of Chapter 41F Appendix 3. As to pruning or trimming, any type of vegetation maintenance could affect sight lines. Therefore, the limitations apply to all maintenance.

2. COMMENT: Related to N.J.A.C. 16:41F-1.2(c)2, the commenter requested the opportunity to provide supplemental analysis by a professional engineer of these site line dimensions to confirm sufficient visibility and potentially revise the same based upon that analysis.

RESPONSE: The Department proposes to adjust the zone of visual influence, which adjusts the sight line dimensions, therefore, supplemental analysis by the commenter's engineer is not necessary.

3. COMMENT: Related to N.J.A.C. 16:41F-1.2(h)1, the commenter has significant concerns regarding the severity of the restriction on non-conforming signs. He states that non-conforming signs are "legal uses," as are conforming signs. They are valuable assets and should be treated similarly, consistent with the goals and the overall purpose of the proposed regulations, especially where there would otherwise be no adverse aesthetic impact.

RESPONSE: The Department agrees with the commenter regarding the eligibility of non-conforming signs for a VCM Plan. Recodified N.J.A.C. 16:41F-1.2(k)1, is proposed for amendment to eliminate the provision that non-conforming signs are not eligible for VCM approval. This comment led to a Department review of other proposed language, which specifically states that VCM is only available to "off premise" outdoor advertising signs. It has been determined that all signs for which the Department has issued an outdoor advertising permit should be eligible for VCM. Accordingly, the requirement to have an outdoor advertising permit has been clarified and all references to "off-premise" signs are deleted throughout the chapter.

4. COMMENT: Related to N.J.A.C. 16:41F-1.2(h)2, the commenter believes that the restriction on entities that have violated a VCM permit in the last five years is overbroad. He states that the time limit should be reduced and language should be clarified to exclude minor violations that have been corrected. Also, violations that are presently pending an appeal should not be considered.

RESPONSE: The Department has considered this comment and has determined that the restriction provided at recodified N.J.A.C. 16:41F-1.2(k)1 should be focused on unresolved violations of N.J.A.C. 16:41C related to the outdoor advertising sign that is the subject of the VCM Plan. The Department, however, finds it reasonable to withhold approval of a VCM Plan for signs that are the subject of a pending violation.

The proposed amendments also address the commenter's request, regarding violations of conditions of an approved VCM Plan during the previous five years, by deleting that provision. It should be noted that while the Department has deleted this provision and does not intend to prevent a sign owner from applying for a VCM Plan permit when there has been a single violation of a VCM Plan permit, proposed new N.J.A.C. 16:41F-9.1(c) provides that a second violation of either N.J.A.C. 16:41 or 16:41C related to a VCM Plan shall result in the sign owner being denied

approval of any subsequent VCM Plan permits for a period of five years following the Department's final agency decision regarding the second violation. The Department declines to add language that makes exceptions "for minor violations that have been corrected" as they would be considered resolved and not subject to this provision. Finally, the Department declines to exclude "violations that are presently pending an appeal" as they are violations that are considered unresolved, and therefore, subject to this provision.

5. COMMENT: Related to recodified N.J.A.C. 16:41F-1.2(k)2, the commenter believes that the restrictions are "quite broad." Clarifications and exceptions, such as those for minor violations and those pending appeal, should be included in this provision.

RESPONSE: The Department has considered this comment and has determined that the restriction provided at recodified N.J.A.C. 16:41F-1.2(k)2 should be focused on unresolved violations of N.J.A.C. 16:41 related to performing landscaping, tree trimming, vegetation control, or unclassified landscaping and has, therefore, amended the language accordingly. The Department declines to provide exceptions for "minor" violations. As noted in the Response to Comment 4, proposed new N.J.A.C. 16:41F-9.1(c) provides that a second violation of either N.J.A.C. 16:41 or 16:41C related to a VCM Plan shall result in the sign owner being denied approval of any subsequent VCM Plan permits for a period of five years following the Department's final agency decision regarding the second violation. Likewise, the Department declines to provide exceptions for violations pending appeal, as they are violations considered "unresolved," and are the subject of this provision.

6. COMMENT: Related to recodified N.J.A.C. 16:41F-1.2(k)3, the commenter is concerned that this provision provides for a scenario in which the applicant complies with all provisions, the VCM plan is reviewed and approved, the work properly performed, but a claim is made that the vegetation control resulted in the sign being visible to another roadway. He states that once the VCM permit is issued, the permit recipient should be able to rely on its validity, even if the incidental result is that the sign may show to another roadway.

RESPONSE: The Department agrees with the commenter that "the permit recipient should be able to rely on its (the permit's) validity, even if the incidental result is that the sign may show to another roadway." The Department believes there are sufficient provisions within this chapter, in terms of plan requirements and reviews, to ensure that there is not an "incidental result" that another sign become visible and determined non-conforming due to the spacing requirements of N.J.A.C. 16:41C. The provision at recodified N.J.A.C. 16:41F-1.2(k)3 is intended to advise applicants that VCM Plans that would result in this situation will not be approved and language has been added to clarify this provision.

## Subchapter 2

7. COMMENT: Related to the definition of "VCM distance," the commenter states that, at a minimum, a standard view time of five seconds should be provided and a longer distance would be required.

RESPONSE: As stated in Response to Comments 1 and 2, the Department has adjusted the location of the zone of visual influence and, as shown in the revised appendix, proposes to include roadways with a speed of 55 mph or above in the VCM distance of 400 feet. As stated in response to that comment, the Department believes that combining the change to the location of the zone of visual influence with the change to Table 2 addresses the commenter's concern that the viewing time is too short.

8. COMMENT: Related to the definition of "Vegetation Canopy Management Plan" or "VCM Plan," the commenter states that the definition should be rewritten because the plan could include pruning, trimming, removal, or a combination of those actions, as well as replacement or supplemental plantings. He also states that the phrase "the appearance of a vegetated corridor" should be deleted because there may be instances where providing such an appearance would be inappropriate.

RESPONSE: As suggested by the commenter, the definition of "Vegetation Canopy Management Plan" or "VCM Plan" already includes reference to removal and supplemental plantings, but the Department agrees that language should be added to include the term "pruning," particularly since the Department proposes to delete the reference to "thinning" as discussed elsewhere in this notice of substantial changes to

proposed new rules. Regarding the phrase “the appearance of a vegetated corridor” the Department proposes to delete that phrase and replace it with “maintains a vegetated corridor for the motorist.” The Department disagrees with the commenter that there will be instances where some sort of vegetated corridor would be inappropriate.

9. COMMENT: Related to the definition of “vista pruning,” the commenter states that his arborist has advised that the definition is inaccurate. He goes on to say that vista pruning essentially means selective thinning of limbs or specific areas within a tree to provide a specific view of an object or scene. This also assumes that the view is from a predetermined distance or location. Large limbs may also need to be removed or reduced to open up the canopy and allow for thinning to occur. It does not necessarily mean that symmetry and balance would be negatively impacted or controlling. In order for vista pruning to be effective, it might require removal of certain larger, more mature trees from the area, and the replanting of new trees in different locations. Vista pruning and structural pruning practices can be implanted on the newer trees so that crown reduction later will not be an issue. He further states that the definition should be eliminated because of concerns related to the limitations in the current wording. If it remains, it should be clarified and be more accurate.

RESPONSE: The Department has considered this comment, and has consulted the most current version of ANSI Standards 300 where the definition of “vista pruning” has been deleted. Accordingly, the Department proposes to delete the term “vista pruning” from this chapter.

10. COMMENT: The commenter requests definitions for the following terms: “standard VCM application” and “minor VCM application.” He feels that the typical application will simply be for the trimming of several trees in a defined area. He believes that the proposed rules are designed to manage every tree and shrub within the defined zone of visual influence and the need to do so will rarely be the case. He further states that to have the industry go through the expense envisioned by the present application process (and the Department go through the concomitant review of the same) for the more typical request to reduce the height or otherwise trim a few trees would be inconsistent with the Department’s present “Economic Impact” and “Regulatory Flexibility Analysis” of these regulations.

RESPONSE: The Department has considered this comment, and while it does not agree that new definitions are warranted, it does agree that there may be instances where applications will be made for VCM Plans that are minor in nature. The Department proposes to address this issue with amendments to the proposed new rules that provide for the classification of a VCM Plan as either minor or major, at N.J.A.C. 16:41F-1.2(c), (d), and (e). N.J.A.C. 16:41F-1.2(d) provides the requirements for classification as a minor plan, including that the plan is not proposed in a regulated area as provided at N.J.A.C. 16:41F-4.2(c); the plan is proposed for an area less than half an acre in size within which trees may be removed, pruned, or both; and the plan is proposed for an area for which a Highway Occupancy Permit has previously been issued for a VCM Plan or for a general permit for landscaping, tree trimming, vegetation control, or unclassified landscaping. All plans not meeting the requirements of proposed new subsection (d) are classified as major. Appropriate changes are made throughout the chapter to include the process of minor and major VCM plans. Specifically, N.J.A.C. 16:41F-6.1(c) has been added to distinguish the requirements that apply only to major plan submissions.

#### Subchapter 4

11. COMMENT: Related to N.J.A.C. 16:41F-4.1(a)3, the commenter believes that this provision is also overly restrictive and the language needs to be clarified and refined. He offers the following examples: the restriction could be entirely unnecessary, if the zone was “mixed” in nature and, in fact, no residential uses were located anywhere close to the zone boundary line; if there is a residential use in a commercial zone, that single nonconforming use should not prevent the VCM process, if the applicant is otherwise compliant; many residential buildings have been converted to commercial uses and without “knocking on” individual doors, how would the true nature of the use be known; the term “adjacent” also poses problems (whether the zone boundary begins immediately next door or across the street); and what if VCM within 500

feet of a residential zone or use does not result in any impact due to topography, dense vegetation, or other conditions? For example, what if the minor vegetation control being proposed (for example, the trimming of a tree or two) could not even be seen from said residential zone or use? There should be some flexibility with this requirement.

RESPONSE: The Department has considered this comment and agrees that, as proposed, the language was overly restrictive. The Department therefore proposes to amend N.J.A.C. 16:41F-4.1(a)3, regarding locations where a VCM Plan shall not be authorized to remove “within 500 lineal feet of a residential use” and replace it with “where the prevalent land use is residential.” These amendments should maintain the Department’s intent to prohibit VCM Plans, and, therefore, the removal of vegetation, that may serve as a screening to residential properties along State highways to the greatest extent practicable and in a manner that is reasonable.

12. COMMENT: Related to N.J.A.C. 16:41F-4.2(a), the commenter asks that a basis for the five-year time period be provided. He assumes that the allotted period allows for continued maintenance of the zone of visual influence. He asks that language be included to provide a clear and appropriate next step after the five-year period ends. He believes that an updated process should be required, rather than a completely new process.

RESPONSE: The five-year time period is based on New Jersey Department of Environmental Protection land use permits and is the maximum deemed appropriate. Pursuant to proposed new N.J.A.C. 16:41F-1.2(d)3, maintenance after this time period should qualify for a minor permit.

13. COMMENT: Related to N.J.A.C. 16:41F-4.2(d), the commenter refers to his remarks regarding the definition of the No Net Loss Reforestation Act (which are not included in this notice as they are not related to the additional Department changes, but will be part of the final notice of adoption) and suggests that clarification should be added that this does not apply to pruning or trimming and only to clear cutting. He also requests the addition of a definition of canopy removal. He further states that compensation should be through tree replacement of major trees. This should be described and should be allowed for certain complete removal of trees. He reiterates that the rules should clarify the distinction between hardwood and other vegetation.

RESPONSE: The Department agrees that the proposed provision refers only to tree removal and subsection (d) has been amended to make that clear by adding the word “tree.” A definition of canopy removal is not necessary because the terms “vegetation canopy” and “removal” are already defined. Compensation is determined and based on guidelines developed by the New Jersey Department of Environmental Protection, Division of Parks and Forestry and N.J.S.A. 13:1L-1 et seq. The Department declines to include descriptions of these rules and guidelines. The issue regarding hardwood trees is discussed in the Response to Comment 14.

14. COMMENT: Related to recodified N.J.A.C. 16:41F-4.2(h), the commenter states there is no definition of non-hardwood tree and he requests that one be included. He further notes the lack of standards in the provision and again refers to the possible use of selective local tree replacement ordinances. A variety of options should also be provided.

RESPONSE: The intent was to allow only selective removal of non-hardwood trees, which are generally considered evergreen, as these trees provide more extensive vegetative cover and remain green year-round. The subsection is amended to clarify that “evergreen,” rather than “non-hardwood” removal is subject to Department approval.

15. COMMENT: Related to recodified N.J.A.C. 16:41F-4.2(i), the commenter believes that the restriction related to the size of branches is severely over-restrictive and asks that the language be modified.

RESPONSE: The Department agrees and the subsection is amended to remove diameter restrictions. Thinning is allowed, as long as it results in an even distribution of branches and does not harm the tree.

16. COMMENT: Related to recodified N.J.A.C. 16:41F-4.2(j), the commenter believes that this provision appears to add a secondary definition of pruning, which is different than the one found in the definitions section. He also states that it is unclear why such particular restrictions on pruning are provided. Also, other types of pruning should be included if this section is to remain.



RESPONSE: This subsection is amended to reflect the amended definition of “pruning” to include “cleaning,” “thinning,” “raising,” or “reduction” and to remove reference to the deleted term “vista pruning.” It is unclear from the comment what other types of “pruning” should be included in this section.

17. COMMENT: Related to N.J.A.C. 16:41F-4.2(j), the commenter states that it is unclear why such particular restrictions on crown reduction are provided. He also states that crowning should be permitted, so long as it does not harm the tree and is for aesthetic purposes.

RESPONSE: The provision is deleted because the Department agrees that crown reduction should be permitted, as long as the tree is not harmed.

18. COMMENT: Related to N.J.A.C. 16:41F-4.2(l), the commenter states that the language of the provision should be modified and an option to remove and replace trees with others should be included. Topping should be permitted, so long as it does not harm the tree and is for aesthetic purposes.

RESPONSE: The provision deals with removal of tree branches, not tree removal. Topping does harm trees and is not permitted. The reference to topping is deleted and the provision now refers to the reduction of tree size.

#### Subchapter 5

19. COMMENT: Related to N.J.A.C. 16:41F-5.3, the commenter believes that, after a decision is made regarding a preliminary site screening package, there should be consideration of an appeal process or filing for reconsideration. Otherwise, this can be the end of the applicant’s pursuit of a permit, as there is no explicit remedy or recourse. Some type of redress/reconsideration process should be included. (This is in contrast to the formal part of the process which allows for filing of an appeal.)

RESPONSE: Revisions have been made to paragraph (b)1, to provide that when a preliminary site screening package is submitted and reviewed, an applicant is notified if a VCM plan cannot be approved, but the plan may be amended and resubmitted. Applicants are also notified with the reasons why a VCM plan would be denied (new paragraph (b)2). New N.J.A.C. 16:41F-5.4 is added to provide a process for appeals of Department determinations that VCM plans would be denied.

#### Subchapter 6

20. COMMENT: Related to N.J.A.C. 16:41F-6.3, the commenter believes that no time period is established for the Department to deem that an application is complete and, therefore, it should automatically be deemed complete. He also believes that any rejection should provide the reason and conditional approval subject to modification, which would make the VCM plan acceptable upon refilling or reconsideration.

RESPONSE: The commenter is incorrect that no time period is established for the Department to deem that an application is complete. N.J.A.C. 16:41F-6.3(c) indicates that the applicant will be notified within 45 days whether or not the application is complete. The Department does agree, however, that this provision could be further clarified by adding “of application submission” after the 45 day language. The commenter’s suggestion that “any rejection should provide the reason and conditional approval subject to modification, which would make the VCM plan acceptable upon refilling or reconsideration” is already provided at N.J.A.C. 16:41F-6.3(d), which states that “the applicant shall be advised if the proposed VCM Plan is approved, if it must be modified, or if it is rejected and the reasons for the rejection.” The Department declines to add language to suggest that a “conditional approval” would be granted. Approval of a VCM Plan requiring modification will not be granted until additional information or materials are provided for a VCM Plan that has been rejected or requires modification.

#### Subchapter 7

21. COMMENT: Related to N.J.A.C. 16:41F-7.1, the commenter states that the term maintenance work should be defined as to whether the work includes additional pruning, trimming, and removal to “maintain” the zone of visual influence. He believes that the provision indicates that the entire application process must be restarted if a permit holder seeks to do additional work in the area once the five-year time period ends. He

asks whether an application can be updated, possibly by provision of notice to the Department.

RESPONSE: The provisions found at N.J.A.C. 16:41F-7.1 describe the work that will be allowed during the five-year period of VCM permit validity. The “maintenance work” described at N.J.A.C. 16:41F-7.1(a) is intended to be the same work as provided in the VCM Plan submitted by the applicant pursuant to N.J.A.C. 16:41F-6.1(a). The language at N.J.A.C. 16:41F-6.1(a) has been clarified to include the phrase “maintenance plan” as it refers to the five-year VCM Plan. The Department does not believe that the term “maintenance” requires definition, as it will be dependent on the scope of the VCM Plan developed by the applicant and will vary depending on the site conditions. The commenter is correct that at the conclusion of the five-year period of permit validity a new permit application will be required. It is anticipated that future applications should meet the provisions of a minor VCM Plan, as provided for in this notice of substantial change to proposed new rules.

#### Subchapter 8

22. COMMENT: Related to N.J.A.C. 16:41F-8.1, the commenter states that there should be avenues for appeal of other aspects of the review process besides just the denial of a formal VCM plan application, possibly throughout the review process or during the preliminary review. If the applicant is told not to file a formal application after the preliminary review process, there should be a mechanism for appealing or requesting reconsideration of that decision.

RESPONSE: Applicants can request a pre-application meeting, which takes place prior to the submission of the preliminary site screening package. These non-mandated meetings provide applicants with guidance related to the application process. As found at proposed N.J.A.C. 16:41F-5.3, when a preliminary site screening package is submitted and during the review process, an applicant is notified if a VCM plan cannot be approved, the plan may be amended and resubmitted. Applicants are also notified with the reasons why a VCM plan would be denied. New language has been added at N.J.A.C. 16:41F-5.4 to provide a process for appeals of Department determinations that VCM plans would be denied.

#### Comment from Lawrence Urban

23. COMMENT: Mr. Urban wants to ensure that the proposed vegetation canopy management practices follow the Migratory Bird Treaty Act (MBTA) by ensuring that no active nests are removed during nesting season. He recommends that the removal of live trees be limited to the Fall/Winter season to minimize the potential impacts to nesting neo-tropical migrant birds and raptors.

RESPONSE: Regarding the suggestion that the Department follow the Migratory Bird Treaty Act (MBTA) in insuring that no active nests are removed during the nesting season, proposed N.J.A.C. 16:41F-6.4(a)3 provided that “All work on deciduous trees shall be performed while they are not in leaf or at a time otherwise directed by the Department.” It was the Department’s intention to take into consideration a number of factors, including the MBTA, when establishing the proper time to permit deciduous tree trimming or deciduous tree removal. However, further clarification on this issue is warranted, therefore, the Department proposes to amend N.J.A.C. 16:41F-6.4(a)3 to specify that the period during which work on deciduous trees can occur is October 1 to March 15, unless otherwise allowed by the Department. This time period takes into consideration both the nesting season for migratory birds, as well as endangered bat species found in New Jersey.

#### Summary of Agency-Initiated Changes:

References to off-premise signs have been deleted throughout the chapter because it has been determined that all signs for which the Department has issued an outdoor advertising permit should also be eligible for VCM.

The Department believes it is necessary to emphasize, in N.J.A.C. 16:41F-1.2(b), that provisions of VCM will apply only to signs for which a valid outdoor advertising permit has been issued pursuant to N.J.A.C. 16:41C, and has replaced a substantively similar subsection (b) with this language. Also, new N.J.A.C. 16:41F-1.2(k)5 is added to include the provision that applications for VCM Plans will not be approved for unconstructed signs that do not have all relevant municipal approvals.

At N.J.A.C. 16:41F-2.1, the definition of “crown elevation” is revised to “crown raising” and “crown reduction” is revised to include simply “reduction” and “thinning” is deleted and replaced with “crown thinning” for consistency. Definitions of “ROW” and “VCM” are proposed because they are used throughout the chapter.

N.J.A.C. 16:41F-4.2(e) is added to provide that compensation for tree or shrub removal of less than one-half acre will be determined by the Department with regards to tree or shrub size, species, and location. N.J.A.C. 16:41F-4.2(m) is added to address replacement for unintentional damage to existing vegetation.

N.J.A.C. 16:41F-6.1 is revised to delineate those items required for a minor VCM Plan and those required for a major VCM Plan. Both types of plans shall be prepared as required by subsection (b) and, as revised, shall include photographs or rendering of the sign from the limits of the proposed VCM Plan area; a copy of approval of a soil erosion and sediment control plan by the appropriate Soil Conservation District for VCM Plans with an area of soil disturbance of 5,000 square feet or more and a copy of all required municipal approvals for the sign that is subject of the VCM Plan. The description of existing and proposed conditions, both vertically and horizontally, from the perspective of the motorists (proposed paragraph (b)5) is deleted because the provisions are also found at paragraphs (b)3 and 4. The language related to supplemental plant materials to be installed (existing paragraph (b)8) is amended to delete “to compensate for vegetation that is thinned or removed to establish the desired vegetation canopy.” The provision requiring that copies of all permits or approvals issued by any regulatory agencies required to execute the VCM Plan (proposed paragraph (b)12) is relocated to new paragraph (c)2. Further, appropriate amendments are made throughout to address the preliminary site screening package and the VCM Plan requirements.

At N.J.A.C. 16:41F-9.1(b), the word “clearing” is deleted and the word “removal” is added because this is the term used throughout the chapter.

Chapter 41F Appendix 3, Figure 3 is revised to remove the visual representation of space outside of Department right-of-way.

#### Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes to the proposed new rules would not affect the Social, Jobs, or Agriculture Industry Impact statements; the Federal Standards Statement; the Regulatory Flexibility Analysis; or the Housing Affordability and Smart Growth Development Impact Analyses as published in the original proposal. However, the Economic Impact would change as a result of this notice of substantial change to the proposed new rules.

#### Revised Economic Impact

Several of the proposed amendments should have a positive economic impact on the holders of outdoor advertising sign permits. Amendments are proposed to add the concept of a minor VCM Plan. As originally proposed, all VCM plans were subject to the same plan submittal requirements. Based on comments that suggested that many of the VCM plans will be limited to minimal pruning of vegetation, the Department has amended the rule to establish minor and major VCM plans. VCM plans that meet the “minor” criteria will have lesser plan submittal requirements, which should have a positive economic impact on the applicant.

The amendments that identify non-conforming signs as eligible for VCM Plans should also be beneficial to those permit holders, as their signs may be eligible for VCM plans. Amendments that adjust the zone of visual influence and viewing distance breakdown in Table 2 of Chapter 41F Appendix 3, should have a positive economic impact for signs that are the subject of an approved VCM Plan, in that the Department has maximized the viewing time for these signs. Amendments are also proposed that add an appeal process for those sites determined not appropriate for VCM plans during the preliminary site screening process. Inclusion of this appeal process may have a positive economic impact on applicants if they can produce additional information that establishes the site should be eligible for a VCM plan.

**Full text** of the proposed substantial changes to the proposed new rules follows (additions to proposal indicated in italicized boldface *thus*; deletions from proposal indicated in italicized braces {thus/}):

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 16:41F-1.1 Purpose

The purpose of this chapter is to enhance visibility of {off-premise/} outdoor advertising signs while protecting vegetation on State highway right-of-way {(ROW)/} under the jurisdiction or control of the New Jersey Department of Transportation {(Department)/}, by establishing standards for Vegetation Canopy Management {(VCM)/}.

##### 16:41F-1.2 Scope

(a) (No change from proposal.)

{(b) VCM will provide for visibility of signs that have been erected and maintained pursuant to a valid outdoor advertising permit issued pursuant to N.J.A.C. 16:41C.}

*(b) The provisions of VCM will apply only to signs for which a valid outdoor advertising permit has been issued pursuant to N.J.A.C. 16:41C.*

*(c) A VCM Plan shall be classified as either minor or major.*

*(d) A VCM Plan meeting the following requirements shall be classified as minor:*

*1. The VCM Plan is not proposed in a regulated area as provided at N.J.A.C. 16:41F-4.2(c);*

*2. The VCM Plan is proposed for an area less than half an acre in size within which trees may be removed, pruned, or both; and*

*3. Where the VCM Plan is proposed for an area for which a highway occupancy permit has previously been issued for a VCM Plan or for a general permit for landscaping, tree trimming, vegetation control, or unclassified landscaping; and the VCM Plan continues to meet the requirements provided in this subsection.*

*(e) All VCM Plans not meeting the requirements of (d) above shall be classified as major.*

{(c)} {(f) The maximum area for inclusion in a VCM Plan shall be comprised of:

1. A horizontal zone of visual influence of 200 to 400 feet approaching the face of an outdoor advertising sign, measured from a point perpendicular from the nearest point of the sign to the roadway edge, as shown in N.J.A.C. 16:41F Appendix 3, Figures 1 and 2 and Table 2. *The zone of visual influence begins at a point that is 0.25 times the VCM Distance (Point B) that corresponds to the roadways posted speed, shown in N.J.A.C. 16:41F Appendix 3, Table 2, measured from a point perpendicular to the nearest point of the sign to the roadway edge (Point A). The zone of visual influence ends at the VCM Distance (Point C) that corresponds to the roadways posted speed, shown in N.J.A.C. 16:41F Appendix 3, Table 2.* The zone of visual influence is intended to provide approximately {3.5 to 4.5} *3.9 to 5.4* seconds of view time of the outdoor advertising sign to an approaching motorist; and

2. (No change from proposal.)

Recodify proposed (d), (e), and (f) as *(g), (h), and (i)* (No change in text from proposal.)

{(g)} {(j) Any removal, thinning, or partial removal of vegetation within State highway ROW, which is intended to enhance the visibility of an {off-premise/} outdoor advertising sign shall be allowed only as approved by the Department pursuant to this chapter and the provisions of N.J.A.C. 16:41.

{(h)} {(k) Applications for VCM shall not be approved {where/} *when:*

*1. Signs are non-conforming, pursuant to N.J.A.C. 16:41C;*

*2. 1. Applicants have unresolved violations related to {any/} the outdoor advertising permit issued pursuant to N.J.A.C. 16:41C {or have violated the conditions of an approved VCM Plan within the previous five years/} for the sign that is the subject of the VCM Plan;*

*3. 2. Applicants have unresolved violations related to highway occupancy permits issued pursuant to N.J.A.C. 16:41, {including, but not limited to,} related to performing landscaping, tree trimming, vegetation control, or unclassified landscaping {without a highway occupancy permit};*

*4. 3. Vegetation management would result in the sign being visible from {a/} an additional highway, other than the highway for which {it has*

been issued} *visibility has been previously approved and* an outdoor advertising permit {and for which an outdoor advertising permit cannot be} issued, *where the regulatory requirements for the issuance of an outdoor advertising permit on the additional highway would not be met;* {or}

{5.} 4. It would be in violation of any locations or conditions as described in this chapter{.}; *or*

5. *A sign, not yet constructed, does not have all relevant municipal approvals.*

## SUBCHAPTER 2. DEFINITIONS

### 16:41F-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

... “Crown {elevation or} raising” means the removal of lower tree limbs to allow clearance or visibility beneath the tree crown while maintaining the natural symmetry of the tree.

“Crown reduction” *or* “*reduction*” means selective pruning to decrease height or spread of the crown.

“*Crown thinning*” *or* “*thinning*” means selective pruning to reduce the density of live branches.

... “Pruning” means the selective removal of plant parts without damaging the natural symmetry of the vegetation or having a negative effect on its long-term health *by cleaning, thinning, raising, or reduction.*

... “*ROW*” means right-of-way.

... {“Thinning” means selective pruning to reduce the density of live branches.}

... “*VCM*” means vegetation canopy management.

... “Vegetation Canopy Management Plan” or “VCM Plan” means a plan by which existing vegetation within State highway ROW is reconfigured through {thinning} *pruning*, selective removal, supplemental plantings, and other means, to produce and maintain a vegetation canopy that has sufficient horizontal and vertical dimension to allow visibility of outdoor advertising signs, but which also {provides a motorist with the appearance of} *maintains* a vegetated corridor *for the motorist.*

{“Vista pruning” means selective removal of lateral branches (major structural branches of the tree) to the branch bark collar on the trunk or a central leader that results in a balanced symmetry of the tree.}

## SUBCHAPTER 4. GENERAL PROVISIONS

### 16:41F-4.1 General restrictions

(a) A VCM Plan shall not be authorized:

1.-2. (No change from proposal.)

3. Where it would be implemented adjacent to lands zoned *exclusively* for residential purposes or {within 500 lineal feet of a} *where the prevalent land use is* residential {use} *as defined at N.J.A.C. 16:41C-2.1;* *or*

4. (No change from proposal.)

(b) (No change from proposal.)

### 16:41F-4.2 General conditions

(a)-(b) (No change from proposal.)

(c) A VCM Plan shall be authorized for the following *regulated* areas only if the applicant has obtained any required permits, {or} approvals, *or notices*, including, but not limited to:

1.-4. (No change from proposal.)

(d) Where {the} *tree removal results in an* area of *vegetation* canopy removal *that* exceeds one-half acre, as measured pursuant to the No Net Loss Reforestation Act, compensation shall be provided in compliance with the act, as determined by the Department.

(e) *Where the tree or shrub removal results in an area of vegetation canopy removal that is less than one-half acre, compensation regarding replacement tree or shrub size, species, and location, shall be as determined by the Department.*

Recodify proposed (e) and (f) as (f) and (g) (No change in text from proposal.)

{(g)} (h) {Non-hardwood} *Evergreen* trees may be removed only when approved by the Department.

{(h)} (i) Thinning shall result in an even distribution of branches on individual limbs and throughout the crown. {The maximum size of the branches to be removed shall be one-and-a-half-inches in diameter.}

{(i)} (j) Pruning is restricted to cleaning, {crown elevation,} crown raising, *crown reduction, and crown* thinning{, and vista pruning}.

{(j)} Crown reduction shall be allowed only where hazardous or unsafe situations exist.}

(k) Crown {elevation or crown} raising may remove a maximum of 25 percent of a tree’s leaf-bearing crown.

(l) {Topping of trees by reducing of} *Reducing* a tree’s size using heading cuts that shorten limbs or branches back to a predetermined crown limit, or severing the leader or leaders, or pruning a tree by stubbing of mature wood, shall not be permitted.

(m) *Trees or shrubs damaged during implementation of a VCM Plan shall be replaced. The replacement tree or shrub size, species, and location shall be determined by the Department.*

## SUBCHAPTER 5. PRE-APPLICATION

### 16:41F-5.2 Site screening by applicant

(a) (No change from proposal.)

(b) The preliminary site screening package *for both minor and major VCM Plans* shall be submitted to the Bureau of Landscape Architecture and Environmental Solutions at the address in N.J.A.C. 16:41F-3.1.

(c) The preliminary site screening package *for both minor and major VCM Plans* shall include the following information:

1. (No change from proposal.)

2. A certification by a landscape architect or professional engineer licensed to practice in the State of New Jersey that the engineer has reviewed the preliminary site screening package and determined that the proposed VCM Plan is not prohibited by any of the provisions of this chapter *and for minor VCM Plans, that the work is not proposed in regulated areas as described at N.J.A.C. 16:41F-4.2(c);* and

3. (No change from proposal.)

(d) *The preliminary site screening package for a major VCM Plan shall also include mapping delineating all applicable regulated areas as described at N.J.A.C. 16:41F-4.2(c).*

### 16:41F-5.3 Review of preliminary site screening package

(a) (No change from proposal.)

(b) Within 30 days of receipt of the preliminary site screening package, the Department will advise the applicant that:

1. A VCM Plan cannot be approved {and the reasons why a VCM Plan application would be denied} *as submitted, but may be amended and resubmitted;* {or}

2. *The reasons why a VCM Plan application would be denied;* *or*

{2.} 3. (No change in text from proposal.)

### 16:41F-5.4 Appeal of a determination that a VCM Plan would be denied

(a) *The appeal process for a determination that a VCM Plan would be denied is as follows:*

1. *The applicant shall submit a written request for reconsideration to the Director of Capital Program Support at the address provided by the Department within 30 days of a notice from the Department. The request shall include reasons for the appeal.*

2. *Within 10 days of receipt of the reconsideration request, the Director of Capital Program Support shall schedule a meeting with the appellant and the Bureau of Landscape Architecture and Environmental Solutions, which shall take place within 30 days thereafter. The meeting will provide the appellant with an opportunity to present additional information in furtherance of the appeal.*



3. *The Director of Capital Program Support shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Director of Capital Program Support, the appellant may submit a further appeal to the Assistant Commissioner of Capital Program Management within 15 days.*

4. *The Assistant Commissioner of Capital Program Management shall schedule an informal hearing within 10 days of receipt of the appeal. The Assistant Commissioner of Capital Program Management shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.*

5. *In reaching the final agency decision, the Assistant Commissioner of Capital Program Management shall consider all of the information previously provided and the additional information presented at the hearing, as well as the provisions of this chapter and the public's right and interest in a safe and efficient highway system. The Assistant Commissioner of Capital Program Management shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall notify the appellant in writing.*

16:41F-5.4}5.5 (No change in text from proposal.)

## SUBCHAPTER 6. VCM PLANS

### 16:41F-6.1 Plan requirements

(a) {A} *Both minor and major* VCM Plans shall describe initial VCM implementation activities and a five-year VCM Plan *maintenance plan*.

(b) {A} *Both minor and major* VCM Plans shall be prepared by a landscape architect licensed to practice in the State of New Jersey and in accordance with the Department's 2007 edition of Standard Specifications for Road and Bridge Construction, Section 800 - Landscaping, incorporated herein by reference, as amended and supplemented, and the Department's 2007 edition of Sample Plans, incorporated herein by reference, as amended and supplemented, and shall include the following:

{1. Photographs of the existing outdoor advertising sign, or a rendering of a proposed outdoor advertising sign, from multiple locations and vantage points;}

1. *Photographs or rendering of the sign from the limits of the proposed VCM Plan area;*

2.-4. (No change from proposal.)

{5. A description of existing and proposed conditions, both vertically and horizontally, from the perspective of the motorist;}

Recodify existing 6. and 7. as 5. *and* 6. (No change in text from proposal.)

{8.} 7. List of supplemental plant materials to be installed {to compensate for vegetation that is thinned or removed to establish the desired vegetation canopy}, showing quantity, species, common name, size, and relevant comments;

Recodify existing 9. and 10. as 8. *and* 9. (No change in text from proposal.)

{11.} 10. The area, in square feet, of soil disturbance *and for VCM Plans with an area of soil disturbance of 5,000 square feet or more, a*

*copy of approval of a soil erosion and sediment control plan by the appropriate Soil Conservation District;* and

{12. Copies of all permits or approvals issued by any regulatory agencies required to execute the VCM Plan.}

11. *A copy of all required municipal approvals for the sign that is subject of the VCM Plan.*

(c) *Major VCM Plans shall also include:*

1. *Delineation of wetlands, flood hazard areas, and riparian zones on construction plans; and*

2. *Copies of all permits or approvals issued by any regulatory agencies required to execute the VCM Plan for regulated areas as provided at N.J.A.C. 16:41F-4.2(c).*

### 16:41F-6.3 Plan review and approval

(a)-(b) (No change from proposal.)

(c) The BLAES and the RMO will concurrently review the proposed VCM Plan and the highway occupancy permit application *and*, within 45 days *of application submission*, {and} advise the applicant if the submission is deemed complete.

(d)-(e) (No change from proposal.)

### 16:41F-6.4 Plan conditions

(a) In addition to any conditions placed on the highway occupancy permit issued for an approved VCM Plan, a VCM Plan shall be subject to the following general conditions and such specific conditions as the Department may reasonably require, which shall be described in the highway occupancy permit.

1.-2. (No change from proposal.)

3. All work on deciduous trees shall be performed {while they are not in leaf or at a time} *during the period of October 1 to March 15, unless* otherwise {directed} *allowed* by the Department.

4.-5. (No change from proposal.)

(b) (No change from proposal.)

## SUBCHAPTER 9. PENALTIES

### 16:41F-9.1 Penalties for unauthorized vegetation management activities

(a) (No change from proposal.)

(b) Any violation of a highway occupancy permit issued in conjunction with the approval of a VCM Plan, including excessive {clearing} *removal* beyond that authorized by the permit, shall constitute a violation of the provisions of N.J.A.C. 16:41 and be subject to the penalties found in that chapter.

(c) *Second violations of either (a) or (b) above shall result in a denial of any subsequent VCM Plan applications for the sign owner for any signs, for a period of five years following the Department's final agency decision regarding that second violation.*

(Agency Note: The text of N.J.A.C. 16:41F Appendix 3, Figure 1, 2, and 3 follows without proposed change symbolization, the changes are described in the comments and responses above; and N.J.A.C. 16:41F Appendix 3, Table 2 follows with the change symbolization as indicated above.)

## Appendix 3

Figure 1

### VCM Zones of Visual Influence: Double-Faced Sign

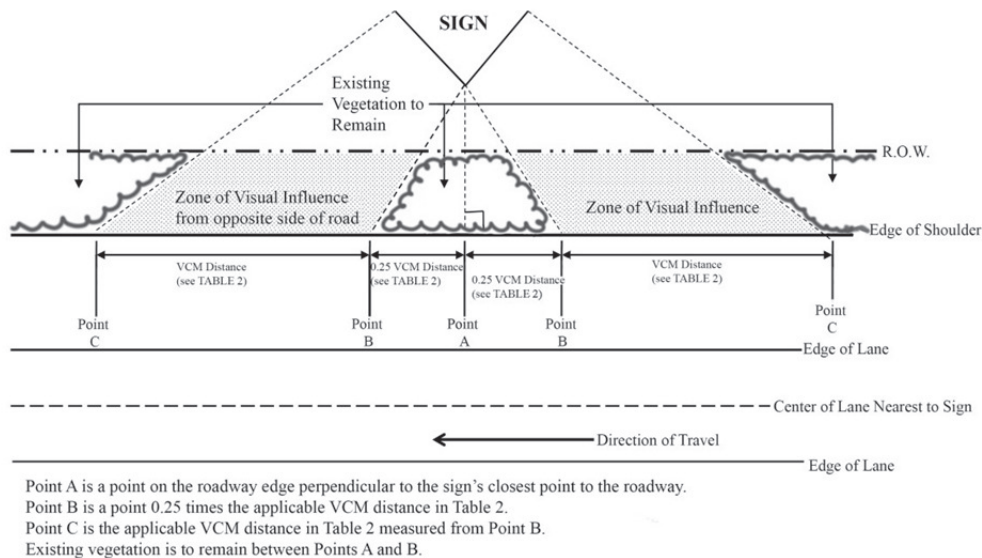


Figure 2

### VCM Zone of Visual Influence: Single-Faced Sign

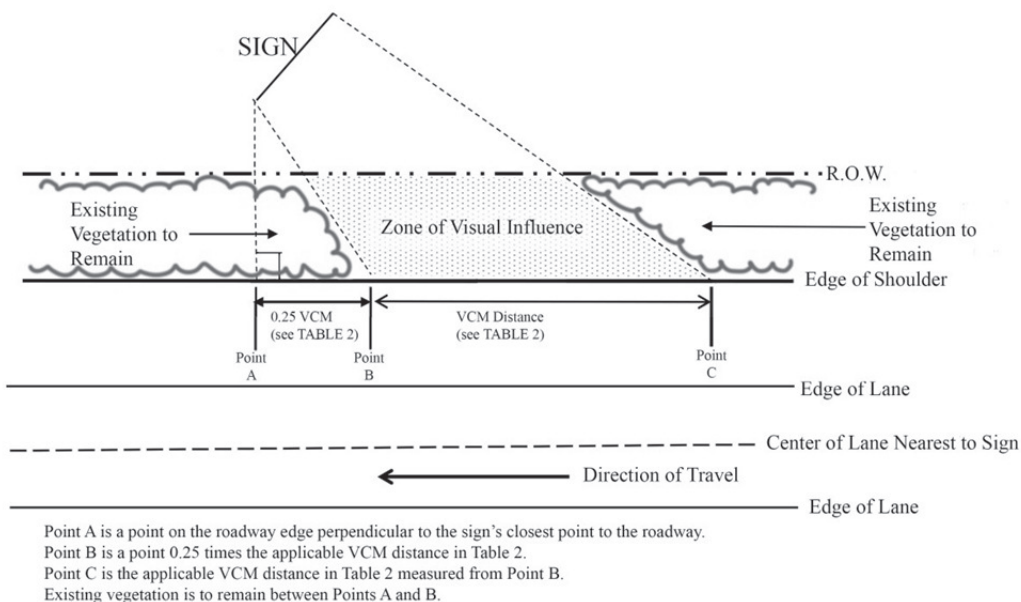
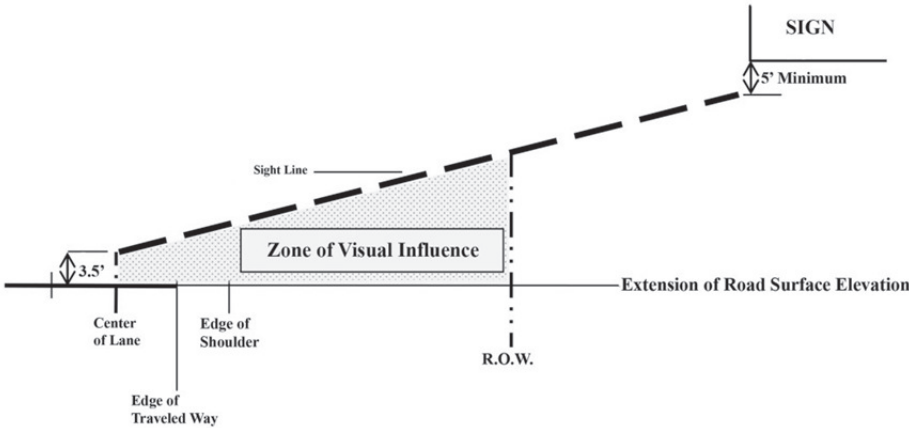




Table 2  
VCM Zones of Visual Influence  
Horizontal Distance

Horizontal Distance (Approximate {3.5 to 4.5} <b>3.9 to 5.4</b> second view time)	
Posted Speed (MPH)	VCM Distance (Feet)
35 and Below	200
{40-55} <b>40-50</b>	300
{60} <b>55</b> and above	400

Figure 3  
VCM Zone of Visual Influence: VCM Height



VCM Height: Measured on a sight line from a point 3.5 feet above the road (Driver's eye level) in the center of the travel lane nearest the sign (not including auxiliary lanes) to a point 5 feet below the edge of the permitted outdoor advertising sign.